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12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

In re:)	
	)	Bankruptcy Case
PG&E CORPORATION	)	No. 19-30088 (DM)
)	
- and -	)	Chapter 11
)	
PACIFIC GAS AND ELECTRIC	)	(Lead Case)
COMPANY,)	
	)	(Jointly Administered)
Debtors.)	
	)	Date: October 23, 2019
	)	Time: 10:00 a.m.
	)	Place: United States Bankruptcy Court
<input type="checkbox"/> Affects PG&E Corporation	)	450 Golden Gate Avenue
<input type="checkbox"/> Affects Pacific Gas and Electric Company	)	Courtroom 17
<input checked="" type="checkbox"/> Affects both Debtors	)	San Francisco, CA 94102
	)	Judge: Hon. Dennis Montali
<i>All papers shall be filed in the Lead Case,</i>	)	RE: Docket No. 3992
<i>No. 19-30088 (DM).</i>)	

25 **OBJECTION OF THE UNITED STATES OF AMERICA TO DEBTORS' MOTION**
26 **PURSUANT TO 11 U.S.C. §§ 363(b) AND 105(a) AND FED. R. BANKR. P. 6004 AND**
27 **9019 FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO ENTER**
28 **INTO RESTRUCTURING SUPPORT AGREEMENT WITH THE CONSENTING**
SUBROGATION CLAIMHOLDERS, (II) APPROVING THE TERMS OF
SETTLEMENT WITH SUCH CONSENTING SUBROGATION CLAIMHOLDERS,

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1 (whether such subrogation is contractual, equitable or statutory), assignment (whether such
2 assignment is contractual, equitable or statutory), or otherwise in connection with payments made
3 or to be made by the applicable insurer to insured tort victims.” *Motion*, Ex. A at Ex A. at 1
4 (emphasis added). This definition of “Subrogation Claims” from the Settlement Term Sheet is then
5 incorporated into the RSA, *Motion*, Ex. A at 5, and forms the crux of the RSA – an agreement to settle
6 the Subrogation Claims for an aggregate allowed claim of \$11 billion, *id.*, Ex. A at 11. The definition
7 of the Subrogation Claims is, however, broad enough to encompass all possible subrogation claims
8 regardless of who holds them or whether those claims are in connection with payments made by
9 insurers to insured tort victims. In other words, the Consenting Creditors, who are the signatories to
10 the RSA, *id.* at Ex. A at 1, are purporting to settle claims that they do not hold and do not have the
11 authority to settle.
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14 The United States informally raised this objection with counsel for the Debtors and believes
15 that the Debtors are amenable to inserting language in an approval order that the definition of
16 Subrogation Claims does not include the claims of any Governmental Unit (as defined in section
17 101(27) of the Bankruptcy Code) and that any such claims are not subject to compromise under the
18 Subrogation Claims Settlement or RSA. To date, however, the United States has not seen a proposed
19 order containing such language and therefore, reserves its right to press this objection at the hearing on
20 the Motion.
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22 II. The RSA Requires the Debtors to Obtain Impermissible Third-Party Releases

23 Section 3(a)(iii) of the RSA, *Motion*, Ex. A at 8, requires Debtors “upon entry into any
24 settlement with any holder or holders of **IP Claims** that fixes the amount or terms for satisfaction of an
25 IP Claim . . . [to have] the holder of the IP Claim contemporaneously execute and deliver a release and
26 waive **any and all claims** to the fullest extent permitted by law **against all parties in interest in the**
27 **Chapter 11 Cases.**” (emphasis added). The RSA defines IP Claims as “any Wildfire Claims that is
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1 not a [settling] Public Entities Wildfire Claim or Subrogation Claim,” *id.*, Ex. A at 4, which is the
2 same definition for “Other Wildfire Claim” under the Plan begging the question of why the RSA had
3 to use a different defined term for the same thing.

4 As the Court noted at a previous hearing, the claims of the governmental entities arising from
5 the Wildfires, like those of the United States, are Other Wildfire Claims under the Plan falling into
6 Class 5B-III, Utility Other Wildfire Claims. Thus, RSA section 3(a)(iii) requires the United States, if
7 it reaches a settlement with Debtors regarding the United States’ claims arising from the Wildfires, to
8 provide the broadest possible release (“any and all claims”) to the broadest possible group (“all parties
9 in interest”) if the United States wants to be paid under the settlement. The RSA then bakes this
10 Settlement Payment Condition into the Debtors’ Plan. *Id.*, Ex. A at 9 (section 3(a)(v)). If the United
11 States or any other holder of an IP Claim does not provide such a release, the Debtors cannot settle
12 without breaching the RSA. This key element of the RSA significantly distinguishes it from the
13 settlement and plan support agreement this Court approved in the Utility’s prior bankruptcy and upon
14 which the Motion heavily relies to justify approval of the RSA. *Motion* at 20-21.

17 In essence, under the guise of a settlement subject to Bankruptcy Rule 9019, the RSA imposes
18 a third party release that Ninth Circuit authority bars. *Resorts Int’l, Inc. v. Lowenschuss (In re*
19 *Lowenschuss)*, 67 F.3d 1394 (9th Cir. 1995). Such an impermissible limitation on the Debtors’ ability
20 to consensually negotiate and resolve claims as part of its reorganization, a fundamental goal and
21 hallmark of chapter 11 reorganization, causes the RSA to fall below even the lowest range of
22 reasonableness as applied under Bankruptcy Rule 9019. *Martin v. Kane (In re A & C Properties)*, 784
23 F.2d 1377 (9th Cir. 1986). Specifically, the RSA is neither reasonable nor fair and equitable because
24 instead of preserving the rights of non-parties to the RSA, it prejudices them with the imposition of an
25 otherwise impermissible release. The RSA’s third party release requirement also contradicts the Plan,
26 which contains (1) an opt-out option from third party releases, *Plan* at § 1.159(d) (definition of
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1 Releasing Parties) and (2) a purported carve out for governmental units from third party releases,
2 among other things, *id.* at 10.13 (“Special Provisions for Governmental Units”). Accordingly, the
3 Court should deny the Motion.

4 **III. The RSA Violates Sections 1121 and 1125**

5 The Court just terminated the Debtors’ exclusivity under section 1121 as to the TCC. Docket
6 No. 4167. Now, Debtors seek approval of the RSA to (1) lock-up the votes of the holders of the
7 Subrogation Claims in favor of the Plan and against the TCC/BH Plan or any other plan and (2)
8 prevent the holder of those claims from negotiating with the TCC and bondholders or anyone else
9 regarding alternative plans. *Motion*, Ex A. at 7. Under similar circumstances in the Utility’s prior
10 bankruptcy, such provisions in the Utility’s plan support agreement drew strong objections as being
11 violations of sections 1121 and 1125. *See, e.g., In re Pacific Gas and Electric Company*, Case No. 01-
12 30923 (Bankr. N.D. Cal. March 21, 2002) [Docket No. 5341] (objection of California Public Utilities
13 Commission). Indeed, the Court approved an *amended* plan and support agreement, *id.* [Docket No.
14 5558], that deleted the voting restrictions with respect to other plans, allowed the settling creditors to
15 negotiate and consider other plans, and deleted the requirement that the settling creditors fully support
16 the Utility’s plan, *id.* [Docket No. 5549] (summary of modifications to settlement and support
17 agreement). This Court should treat the RSA no differently and deny the Motion for seeking approval
18 of an agreement that violates sections 1121 and 1125.

19 CONCLUSION

20 For all of the foregoing reasons, the Court should deny the Motion and not approve the RSA.

21 Date: October 16, 2019

22 Respectfully submitted,

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